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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

S.A.No.561 of 2012 and
M.P.No.1 of 2012

A.Sathya

... Appellant / Defendant

Vs.

1.K.Selvaraj (died)
2.Karuppathal
3.Suseela
4.Madhuvanthi
5.Abishek Kumar

(respondents 2 to 5 brought on record as LR's of the deceased sole respondent viz., K.Selvaraj vide order dated 04.02.2022 in CMP.Nos.6120, 6121 and 6122 of 2018)

... Respondents / LR's of Plaintiff

Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 28.02.2012 made in A.S.No.41 of 2011 on the file of the Principal Sub Court, Erode, reversing the judgment and decree dated 15.03.2011 made in O.S.No.90 of 2008 on the file of the District Munsif-cum-Judicial Magistrate Court, Kodumudi.

For Appellant : Mr.N.Manokaran

For Respondents : Ms.P.Vidhyashree for
M/s.P.T.Ramadevi



JUDGMENT

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This Second Appeal has been filed to set aside the judgment and decree dated 28.02.2012 made in A.S.No.41 of 2011 on the file of the Principal Sub Court, Erode, reversing the judgment and decree dated 15.03.2011 made in O.S.No.90 of 2008 on the file of the District Munsif-cum-Judicial Magistrate Court, Kodumudi.

2. Heard Mr.N.Manokaran, learned counsel for the appellant and Ms.P.Vidhyashree, learned counsel for the respondents and perused the materials available on record.

3. The defendant is the appellant against whom the plaintiff has filed a suit for mandatory and permanent injunction. The Trial Court has dismissed the suit. In the First Appeal preferred by the plaintiff, the First Appellate Court has allowed the First Appeal by reversing the judgment and decree of the Trial Court and thereby decreed the suit. Aggrieve over that, the defendant has filed this Second Appeal.



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4. The short facts pleaded in the plaint are as follows:

The suit property was purchased by the plaintiff on 12.06.2002 from one Kanagasabapathy which measures 4020 Sq.ft and it is a vacant site situated on the eastern side of north-south Railway Station Road. There is a 12 feet width north-south pathway situated on the eastern side of the 'A' schedule. In order to connect 12 feet pathway to Railway Station Road, there is a 14 feet width common pathway. 14 feet width common pathway is a path leading to 12 feet width pathway and 12 feet pathway is described under 'B' schedule of the suit property. The plaintiff and his predecessor in title had been enjoying the suit 'A' schedule pathway without any disturbance. The defendant's property is adjacent to the plaintiff's property. From the suit pathway to the middle of the defendant's property, there is a 4 feet pathway which would lead to the plaintiff's house. On the eastern side of the 'B' schedule pathway, there is a marriage hall belonging to the defendant. The pathway has been enjoyed by the plaintiff and others.

4.1. On 31.05.2008 when the plaintiff was not in station, the defendant had encroached 100 feet on the eastern side of the suit property and put a gate and closed the 'B' schedule pathway. The defendant has got



no right to close the pathway. Despite she was asked to remove the gate, she did not heed. The defendant has been causing hindrance by putting a generator and electrical lights in the pathway. The defendant had also filed a suit in O.S.No.79 of 2008 by claiming illegal rights. Hence, the plaintiff has filed this suit for mandatory injunction to remove the gate and restore the pathway to its original position and permanent injunction against the defendant to restrain them from preventing the plaintiff to use the pathway.

5. The averments made in the written statement filed by the defendant are as follows:

The allegation that there is a pathway of 12 feet width in existence as described in 'B' schedule is not true. It is true that the defendant's property is adjacent to the plaintiff's property. It is false to state that there is a pathway running in the middle of the defendant's property touching the suit pathway and reaching up to the plaintiff's house. The defendant's marriage hall is situated on the eastern side of the 'B' schedule pathway. On 29.01.1997, the defendant purchased the property on the eastern side of the pathway and thereafter, she erected the marriage hall and house. In the year 1998, with the consent of the plaintiff's vendor and all other co-owners of schedule 'A'



and 'B' of the suit schedule properties, the defendant has erected a compound wall on the northern side of the pathway and fixed a gate on the eastern side. The plaintiff has purchased the suit property after the gate was erected and he has got the knowledge about the same and he did not question it at the time of purchase. Hence, mandatory injunction as claimed by the plaintiff cannot be granted.

6. During the course of the trial, on the side of the plaintiff, P.W.1 and P.W.2 have been examined and Exs.A1 and A2 were marked. On the side of the defendant, D.W.1 and D.W.2 have been examined and Exs.B1 to B6 were marked.

7. At the conclusion of the trial and considering the evidence on record, the Trial Court has dismissed the suit and the First Appeal preferred by the plaintiff was allowed by reversing the judgment and decree of the Trial Court and decreed the suit. Hence, the defendant has filed this Second Appeal by raising the following substantial questions of law:

"1. Whether in law the First Appellate Court was right in decreeing the suit without considering the question of barring of limitation to file the suit?"



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2. Whether the First Appellate Court is right in law to declare the suit for mandatory injunction unmindful of the fact that all the interested parties are not impleaded as parties to the suit?”

8. The learned counsel for the appellant / defendant submitted that the deceased plaintiff has purchased the suit property after four years of the construction of Marriage Hall by the appellant / defendant. The gate was erected in the year 1998 itself and hence, the suit is barred by limitation. The respondents / legal heirs of the deceased plaintiff have got their access directly from the Railway Station Road as per their sale deed. Hence, using the 12 feet pathway at the backside of his house will not arise. The appellant has already filed a suit in O.S.No.79 of 2008 for permanent injunction in respect of 'B' schedule pathway and the same was decreed on 26.02.2010. The judgment and decree passed in O.S.No.79 of 2008 were marked as Exs.B4 and B5 and the same has not been challenged by the respondents.

9. The learned counsel for the respondents submitted that the pathway is very much a public pathway. The appellant cannot claim any exclusive right over the public pathway. The appellant has erected a gate in the public



pathway and that was preventing the respondents' right to access the other pathway which is available in the backside of their house. Since the violation is continuous, there is no bar for filing the suit. Hence, the suit is not barred by limitation.

10. There is no dispute as to the location of the suit pathways which are described under 'A' and 'B' schedule of the suit. Even though the existence of the pathways are not denied, the dispute is with regard to the erection of gate and iron pillars at the point where 'A' and 'B' where the pathways meet. So far as 'A' schedule pathway is concerned, there is no dispute. The parties do not deny the existence of 'B' schedule pathway. But the appellant denies the usage of the pathway by the respondents. The suit 'B' schedule pathway is situated on the backside of the respondents' property and its frontage is facing 'A' schedule pathway. The 'A' schedule pathway is running north to south and then turns east and meets the 'B' schedule pathway and thereafter runs north to south behind the respondents' house.

11. The front portion of the respondents' house is facing west direction and hence 'B' schedule pathway runs on the eastern side of the



house. The appellant has got her marriage hall situated on the eastern side of the pathway which is adjacent to the meeting point of 'A' and 'B' schedule pathways. The said fact was also not denied by the parties.

12. It is submitted by the learned counsel for the appellant that the appellant has erected the gate at the meeting point of 'A' and 'B' schedule pathways even when the respondents' predecessor in title were in possession of the respondents' property. It is submitted that the appellant has erected the gate as early as in the year 1998 and the deceased plaintiff had purchased the property in the year 2002. These facts were also not denied by the parties. However, the appellant claims that the suit gate has been fixed by her with the consent of the deceased plaintiff's predecessor in title.

13. Suit 'A' and 'B' schedules are no doubt public pathways. Anyone who obstructs the public pathway by constructing any structure cannot seek shelter by stating that he had obtained the consent of the users of the pathway. The public pathways are meant for the use of public and hence, no individual user can have any right to give permission to any third party to put up any structure by obstructing the pathway. In other words, the public



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pathway cannot be treated as anyone's personal property in order to give consent for any activities in the form of erection of structures to be made therein.

14. The categorical contention of the appellant is that the respondents does not have any right of access in 'B' schedule pathway because they have access in 'A' schedule pathway, as their house is facing the said pathway. Since 'B' schedule pathway is a public pathway for the houses which situate on its either side, the occupants will naturally have the right to access in the said pathway, irrespective of the fact whether they have other access to their house or not. The character of the pathway as the public pathway itself is sufficient to show that every public who has their houses on either side of the pathway got the right of usage and the restrictions if any for the usage can be only be made by the Local Administration and that too, for any specific and acceptable reason.

15. Apart from the respondents, there are other parties whose houses are also situated abutting 'A' and 'B' schedule pathways. If at all the appellant or any other individual owner who has their interest in closing the



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point where 'A' and 'B' schedule pathways meet, such step can be taken only with the indulgence of the Local Administration and not by themselves. By constructing a gate at the meeting point of 'A' and 'B' schedule pathways, the public property is assigned with the character of private property which cannot be encouraged.

16. Now, the only point on which the appellant stresses her claim is that she has constructed a gate as early as in the year 1998 and the deceased plaintiff who is a subsequent purchaser in the year 2002 has filed a suit in the year 2008 and it is barred by limitation. The First Appellate Court has given a constructive interpretation for limitation by observing that there is a continuing violation so long as the gate is in existence by obstructing the public pathway. So it is held that there is a continuing cause of action and hence the suit is not barred by limitation.

17. Reliance was placed by the learned counsel for the appellant to the judgment of this Court held in the case of ***R.Kumar Vs. G.Jaganmoorthy (S.A.No.674 of 2015)*** in support of his contention that once a structure is erected and completed, the limitation will start running



from the date on which the construction has been completed and hence, any aggrieved person ought to have filed a suit within three years of limitation and thereafter, the suit will be barred by limitation. The learned Single Judge who rendered the above judgment has relied on the judgment of the Delhi High Court in the case of ***Faqir Chand Vs. Lila Ram***, reported in ***AIR 1994 Delhi 161***, wherein, it is held that "*the plaintiff who had admitted the testimony of existence of tin-shed for more than three years prior to the filing of the suit, cannot run away from limitation*".

18. But in the above judgment, it is seen that the Local Administration is not a party against whom a party has to set up his completed obstruction and get its transformed as a right in view of lapse of the period of limitation. Hence, I am not inclined to rely on the above judgment for the purpose of this case.

19. So long as the violation is being done in a public pathway, in whatsoever manner, it continues to be a violation, so long as the property continues to be a public property. Once the character of the public property is lost and it gets converted into a private right either by way of prescription



or by purchase, then only in my view it can be stated that the cause of action ceased to exist.

20. In the instant case, even the Local Administration itself cannot have the right to cause obstruction to the public pathway because the very purpose of leaving the public pathway itself is for public convenience. Just because anyone or few or even all the users of the public pathway remain indifferent, it cannot be inferred that the party who had violated by causing obstruction had acquired his entitlement in view of the expiry of the period of limitation. Even if the deceased plaintiff's predecessor in title might have been a silent watcher or consenting party for obstructing the public pathway, but that alone cannot take away the plaintiff's right to use the public pathway.

21. As per Section 2(2) of the Tamil Nadu Land Encroachment Act, 1905, "*all public roads and streets vested in any local authority shall be deemed to be the property of the Government*". So, no one is entitled to encroach the above Government property by putting up their own constructions or structures as per their whims. Even if such structures are in



existence and enjoyed by the individual for years together, that will not confer any right on them. In this regard, it is appropriate to cite the judgment of the Division Bench of this Court held in the case of ***T.K.Shanmugam, Chennai Vs. State of Tamil Nadu***, wherein, it is held that even if it is assumed that some individuals have been in possession of Government property for a considerable period, that would not confer any right on them simple because they are encroachers. Hence, the public property has to be protected as how it has been allowed to be kept for the usage of the public.

22. As stated already, the right over the public pathway is conferred on the users not by any private individuals and hence, the right cannot be allowed to get extinguished at the hands of private parties. So long as the location where the gate has been constructed remains a public property, it is a continuing violation giving raise to continuing cause of action. If three years time from the date of obstruction is taken as the maximum time to get it confirmed as a right, then every individual who causes obstructions to the public pathway would claim entitlement against Local Administration also



by stating that the Administration has been kept quite for three years without initiating any action to remove such obstruction or encroachment.

23. In the instant case, the gate put up by the appellant is a clear encroachment. In fact, the appellant herself has filed a suit against the deceased plaintiff in O.S.No.79 of 2008, alleging that the deceased plaintiff had put up a car shed in the 'B' schedule property and he should be injuncted from doing so. What the appellant expects from the deceased plaintiff would be equally expected from him also by the deceased plaintiff and the other users of the 'B' schedule pathway. So, I am not convinced with the arguments of the learned counsel for the appellant that the suit is barred by limitation in view of lapse of three years from the date of erecting a gate in the public pathway by the appellant. **Thus, the substantial question of law No.1 is answered against the appellant.**

24. So far the respondents are concerned, they are affected due to the fact that they were prevented from using the 'B' schedule pathway, despite it is a public pathway. Just because the other users are not allowed or intended to join with the deceased plaintiff to file a suit, the deceased plaintiff cannot



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be expected to implead all of them in his suit filed against the defendant. In other words, the suit filed by the deceased plaintiff by impleading the defendant alone as a party can be effectively disposed in respect of the issues raised in the case. It is not the situation that the issue that has arisen in this case can be dealt or disposed only in the presence of the other users of the pathway. Hence, the plea that the suit is bad for non-joinder of parties will not arise. **Thus, the second substantial question of law is also answered against the appellant.**

25. As stated already, the appellant / defendant is expected to follow some discipline which she expects from the deceased plaintiff in allowing the public pathway to be used by all the users. It is upto the public to make appropriate representation to the Local Administration either to have it or close it and it is for the Local Administration to take a call on this and not the private parties. The individuals cannot assume right upon the public pathways and put up constructions by obstructing the pathways at any of its point by erecting any structures including the fixing of gate. The First Appellate Court has rightly dealt the issue and chosen to decree the suit on



the basis of the right reasoning and proper appreciation of the materials on record. Hence, I do not find any grounds for interference.

26. Hence, this Second Appeal is dismissed. The judgment and decree dated 28.02.2012 made in A.S.No.41 of 2011 on the file of the Principal Sub Court, Erode is confirmed. The appellant / defendant is directed to remove the gate in the suit pathway within a period of one month from the date of receipt of a copy of this judgment and decree. No costs. Consequently, connected miscellaneous petition is closed.

20.12.2024

Speaking order

Index : Yes

Neutral Citation : Yes

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To

1. The Principal Sub Court,
Erode.

2. The District Munsif-cum-Judicial Magistrate Court,
Kodumudi.



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R.N.MANJULA, J.

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